U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10792725

Date: AUG. 02, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an information technology (IT) project manager, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for the underlying classification. The Director additionally determined that the proposed endeavor lacked national importance and that the evidence did not establish that the Petitioner is well positioned to advance the proposed endeavor. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner submits additional evidence and reasserts her eligibility, arguing that the Director did not properly weigh and consider the evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] The remaining issue to be determined, therefore, is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Regarding the Petitioner's claim of eligibility under Dhanasar's first prong, she indicated that her proposed endeavor in the U.S. is to offer her "expertise to fill the gap of IT skilled professionals in the U.S. and bring innovative results to local companies, organizations, and individuals[, thereby] improving both their social and monetary interests. Either as a direct employee or self-employed, she plans to offer "expert IT services," as well as develop and introduce "quality research tools tailored to diverse industries" that will generate "direct and indirect jobs coupled with valuable contributions to the IT field . . . ." The Petitioner states that her services will help U.S. entities "adapt to specific field technologies that will allow them to penetrate culturally diverse, and business complex, markets, such as Latin America – where certain IT legislations and technological platforms are different from those in the United States, and thus hinder the operational efficiency, and profitability, of American companies in such geographic regions." However, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889.[5] In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also stated that "[a]n endeavor that has significant potential to employ U.S.

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).

[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The record contains evidence that the Petitioner earned a foreign four-year degree in computer science in 2000 and has at least five years of professional experience in the IT field.

[5] While we acknowledge industry reports and articles on the benefits of IT to national and international productivity, as well as the shortage of qualified IT professionals, these reports and articles are insufficient to substantiate the Petitioner's claims concerning the national importance of her proposed endeavor because they do not speak to the specific impact of the Petitioner's work.

workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890.

We also evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement by looking to evidence that documents the "potential prospective impact" of her work. Although the Petitioner's statements reflect her intention to provide valuable consulting services for her employer and clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In Dhanasar we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her employer and clientele to impact her field or the nation's fiscal condition more broadly at a level commensurate with national importance.

To illustrate our conclusion, we observe that the Petitioner described her proposed endeavor as an intention to "advance her career," a phrase which primarily suggests personal gain. Although she claims that the proposed endeavor will help U.S. companies, this help is contingent upon those companies paying her for her services or subscribing to her products, indicating advancement more so for the parties involved than for overall national impact. The Petitioner stated that she "participated in the conception, design, development, quality assurance, and implementation of the proprietary 'Level 4 Pay software'" and that once this technology is implemented by other companies, it will maximize their revenue and increase the flow of money to the United States.[6] Even if true, the Petitioner has not explained why this technology would confer a benefit beyond that afforded to the Petitioner and the companies who subscribe to the technology. For example, she does not explain in detail how it would maximize revenue in a manner that would increase the flow of money to the United States, nor has she offered estimates of how much money would it generate. The Petitioner made little attempt to provide concrete numbers or estimates of revenue or how many companies must subscribe to the technology in order for it to increase the flow of money to the United States.[7] On appeal, the Petitioner argues that her contributions are not limited to her employees and respective clients because technology work is disseminated throughout the industry by events, conferences, and word of mouth. However, the Petitioner has not explained how her proprietary payment plan technology and internal company work would be disseminated in this way and even if it was, what benefit dissemination alone would confer on a national or even regional scale.

In addition, she claims that her leadership of projects at major companies significantly contributes to the economy, but she has not offered qualitative or quantitative evidence of this. Although her services may have economically impacted the companies who hired her, this success has not been connected

[6] Without further explanation, it is unclear what level of involvement she had in the Level 4 Pay software and how much attribution or ownership she holds. For instance, the Petitioner has not submitted evidence to support a finding that the technology is proprietary, such as patents or other intellectual property documents. Moreover, the Petitioner has not explained in detail how this technology is significantly different or better than other online payment platforms. While we acknowledge the document containing three bullets explaining the "differentials" of this platform, the Petitioner has not adequately shown that these benefits are not also already offered by other payment platforms.

[7] We acknowledge the Statements of Work and various contractual documents engaging the Petitioner in IT-related services. Some of these documents are either missing signatures, relevant dates, have been entered into for short (two-week) durations, or were executed after the filing of the I-140 petition.

to a larger impact in the IT field or to the economy as a whole. The Petitioner claims her tactics are "known" to increase market share, productivity, and profitability, but the impact to the industry as a whole as a result of these tactics has not been substantiated in the record.

The Petitioner claimed abstract economic benefits of her proposed endeavor, including that she will seize market and investment opportunities for U.S. companies doing business in Brazil and that she will "contribute to U.S. companies' productivity." We acknowledge statements that her proposed endeavor will ensure national economic contributions, however the record contains little concrete support for these statements. For instance, the Petitioner submitted insufficient evidence to support her claim of an increase in Gross Domestic Product (GDP) as a result of tax revenues linked to her business. As previously stated, she has not demonstrated how her assistance to U.S. companies will generate sufficient revenue to impact the national economy. Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers. Although she claims she will hire professionals, she has not stated how many, in what capacity, for how long, or how much she will pay them. Finally, the Petitioner has submitted insufficient evidence to support a finding that her proposed endeavor would make any appreciable difference in the "urgent shortage of qualified IT professionals in the U.S." Overall, any impact her proposed endeavor has appears to be localized, temporary, and internal in nature. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

Lastly, the Petitioner points to her education, IT skills, project management abilities, knowledge of Brazilian markets, Oracle expertise, and years of experience. The Petitioner's knowledge, skills, and consulting experience, however, are considerations under Dhanasar's second prong, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

In the present matter, the Petitioner's evidence is insufficient to show that her proposed work has broader implications for her field, as opposed to being limited to the clients and the companies who hire her. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.